



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: AUGUST 12, 2022

IN THE MATTER OF:

Appeal Board No. 622669

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits, effective March 30, 2020. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 28, 2022 (), the Administrative Law Judge sustained, effective April 28, 2021, the employer's objection and overruled the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked full time as a sheet metal worker for a construction company from 2007 through April 27, 2021. The claimant is under a doctor's care for a degenerative back condition as a result of his work as a manual laborer. He experiences herniated discs, major back pain, and spasms that put his back totally out so he cannot stand up straight. At the time of separation, the claimant was seeing his doctor on a continuous basis for current treatment and longer-term treatment planning.

The employer was aware that the claimant had a back issue. A doctor's note

dated June 24, 2019 informed the employer that the claimant "may return to work full duty without any heavy lifting." After the claimant submitted his doctor's note, he did as much light-duty work as he could. He still needed to work, so he also did work that involved heavy lifting when he was told to. He also reminded his superiors of his need for light-duty work.

In April 2021, the claimant's crew was working on a roof installing panels. The panels are approximately 60-70 feet long and require heavy lifting. The claimant asked to be reassigned to install flashing, which is a less physically demanding task. Flashing work was only available about 10% of the time. The foreman (JA) assigned the claimant to do flashing work, and the claimant did this work when it was available. Shortly before April 27, the claimant asked the employer's superintendent (FC), who was above the foreman, whether any other light-duty work was available. FC did not respond. The claimant asked for light-duty work from another foreman (JS), who had no light-duty work to offer. The claimant continued doing flashing work and panel installation through his last day of work.

On April 27, the claimant told JA that he needed some time off because his back was bothering him. The employer did not offer the claimant any light-duty work after April 27. The claimant called FC and discussed filing an unemployment claim because the employer did not have appropriate work for him. FC did not offer the claimant light-duty work and approved of his filing.

OPINION: The credible evidence establishes that the claimant did not return to work because the employer did not have light-duty work available for him. The employer was aware that the claimant had a back condition and had submitted a doctor's note stating that he could not engage in heavy lifting. The claimant took reasonable steps to preserve his employment when he made multiple requests for light-duty work. We are not persuaded otherwise by the controller's contention that she was unaware of the claimant's request for light-duty work, as she admitted that requests may be made to the supervisors in the field. As the claimant did not return to work for a medical reason after taking reasonable steps to preserve his employment, we conclude that the claimant voluntarily left his employment with good cause and that his employment ended under non-disqualifying conditions.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from

receiving benefits because the claimant voluntarily separated from employment without good cause, is overruled.

The initial determination, holding the claimant eligible to receive benefits, effective March 30, 2020, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER